

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VS.

AND

AND

Docket No. 159,233

ORDER

Kansas Workers Compensation Fund appeals from an Award entered by Administrative Law Judge Alvin E. Witwer on June 28, 1994.

APPEARANCES

The respondent and its insurance carrier appeared by and through their attorney Michael T. Halloran of Kansas City, Missouri. The Kansas Workers Compensation Fund appeared by and through its attorney Gary L. Jordan of Ottawa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has reviewed and considered the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

ISSUES

The Kansas Workers Compensation Fund argues the Administrative Law Judge erroneously applied the provisions of K.S.A. 44-534a relating to reimbursement by the Fund for benefits paid in cases ultimately found not to be compensable. The Fund argues Kansas had no jurisdiction over this claim and, therefore, the Kansas Act cannot be applied to require reimbursement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the Award by the Administrative Law Judge should be affirmed. The Appeals Board adopts as its own the findings and conclusions reached by the Administrative Law Judge and stated in his Award.

The Appeals Board notes specifically that claimant filed an Application for Hearing with the Kansas Division of Workers Compensation on October 7, 1991 alleging injury arising out of and in the course of his employment. The application indicates the injury occurred in Missouri. Respondent's insurance carrier paid the claimant 8.57 weeks of temporary total disability compensation at the rate of \$278.00 in the total amount \$2,832.46. Respondent also paid hospital expenses in the total amount of \$27,804.20.

The evidence produced in this case established that claimant did not, in fact, suffer an injury arising out of and in the course of his employment. Claimant suffered his injury while roping steers at a farm of a friend near LaCygne in Linn County, Kansas.

Since claimant's injury was not a compensable work-related injury, the respondent sought reimbursement for amounts paid pursuant to the provisions of K.S.A. 1990 Supp. 44-534a(b) which provides in pertinent part as follows:

"If compensation in the form of medical benefits, temporary total disability benefits or vocational rehabilitation benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to a preliminary award entered under this section and, upon a full hearing of the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to as determined in the full hearing on the claim."

The Fund argues the above quoted provisions do not apply here because the claim could not in the first instance have been brought in Kansas. Kansas had no jurisdiction over the subject matter of this claim because the injury occurred in Missouri and the evidence does not establish either that claimant's principle place of employment was in Kansas or that his contract of employment was entered in Kansas.

The Appeals Board finds that, as a prerequisite to reimburse it is sufficient, under the circumstances in this case, that the benefits were paid on a claim filed in Kansas later determined upon a full hearing not to be a compensable work-related injury. The Kansas Division of Workers Compensation has jurisdiction over the Kansas Workers Compensation Fund, the party subject to this Order. The Kansas Division of Workers Compensation also has jurisdiction over the subject matter, i.e., reimbursement for benefit that is paid on a Kansas claim later determined not to be compensable. The Appeals Board, therefore, agrees with the Administrative Law Judge's order for reimbursement.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Alvin E. Witwer dated June 28, 1994 should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael T. Halloran, Kansas City Missouri
Gary L. Jordan, Ottawa, Kansas
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director